

AMENDED IN ASSEMBLY MAY 5, 2005

AMENDED IN ASSEMBLY MARCH 31, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1294

Introduced by Assembly Member Umberg

February 22, 2005

An act to add Chapter 1.3 (commencing with Section 629) to Title 15 of Part 1 of the Penal Code, relating to investigative subpoenas.

LEGISLATIVE COUNSEL'S DIGEST

AB 1294, as amended, Umberg. Investigative subpoenas: violent felonies.

Existing law provides for certain formal criminal investigative procedures circumscribed by statute, including search warrants, grand jury proceedings, and special procedures for wiretapping orders and for administrative subpoenas for financial records. Existing law permits the head of any executive department of the state to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony pertinent or material to any inquiry, investigation, hearing, proceeding, or action conducted in any part of the state.

This bill would, *in any criminal investigation of a specified felony where there is probable cause to believe that an emergency situation exists involving a substantial danger to life or limb*, authorize the ~~chief executive officer of a law enforcement agency, or a specified~~ *Attorney General, district attorney, sheriff, police chief, or their designee*, to issue *in writing, under penalty of perjury*, subpoenas for the production of certain records from a public utility, bank, credit union, savings association, telephone company or other provider of

electronic communication services when investigating a violent felony. The subpoenas would be authorized to require only specified limited responses. This bill would provide for an enforcement mechanism for subpoenas that are not obeyed through the superior court. This bill would allow the public utility, bank, credit union, savings association, telephone company or other provider of electronic communication services to charge a reasonable fee for compliance with these subpoenas, and would provide ~~criminal and civil immunity for good faith disclosures pursuant to these provisions that no cause of action shall be brought against any provider, its officers, employees, or agents for providing information, facilities, or assistance in good faith compliance with a subpoena.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 1.3 (commencing with Section 629) is
2 added to Title 15 of Part 1 of the Penal Code, to read:

3
4 CHAPTER 1.3. INVESTIGATIVE SUBPOENAS
5

6 629. (a) In any criminal investigation of a felony listed in
7 subdivision (c) of Section 667.5, ~~the chief executive officer of a~~
8 ~~law enforcement agency, or a command officer designated by~~
9 ~~him or her, may issue in writing where there is probable cause to~~
10 *believe that an emergency situation exists involving a substantial*
11 *danger to life or limb, the Attorney General, district attorney,*
12 *sheriff, police chief, or their designee may issue in writing, under*
13 *penalty of perjury, and cause to be served a subpoena to a public*
14 *utility, bank, credit union, savings association, telephone*
15 *company or other provider of electronic communication services*
16 *for the name and address of a person listed in the records of the*
17 *customers of the public utility, bank, credit union, savings*
18 *association, telephone company or other provider of electronic*
19 *communication services.*

20 (b) Except with regard to investigations of felonies listed in
21 subdivision (c) of Section 667.5, and, with regard to those, only
22 as provided in this chapter, nothing in this chapter shall be
23 construed to alter privacy rights or interests.

1 629.1. (a) For a subpoena issued pursuant to Section 629 to
2 be valid, it must contain all of the following:

3 (1) The social security number of the person about whom the
4 subpoena is made, if it is known or available to the issuing
5 authority.

6 (2) A written certification that a crime report has been filed
7 that involves a violent felony and that the subpoena is made to
8 further a criminal investigation being conducted by the law
9 enforcement agency.

10 ~~(3) The signature of the chief executive officer of the law~~
11 ~~enforcement agency or the command officer he or she has~~
12 ~~designated. As used in this chapter, "command officer" means an~~
13 ~~officer in charge of a department, division or bureau of the law~~
14 ~~enforcement agency.~~

15 *(3) The signature of the Attorney General, district attorney,*
16 *sheriff, police chief, or their designee.*

17 (b) A subpoena issued pursuant to Section 629 shall require
18 compliance prior to a specified date listed prominently in the
19 subpoena.

20 (c) A subpoena issued pursuant to Section 629 may do only
21 one or both of the following:

22 (1) Require a public utility, bank, credit union, savings
23 association, telephone company or other provider of electronic
24 communication services to disclose the business records of a
25 customer which may be relevant to an authorized law
26 enforcement inquiry.

27 (2) Require a custodian of records to give a statement or an
28 affidavit concerning the production and authentication of these
29 records or information.

30 629.2. (a) (1) If a public utility, bank, credit union, savings
31 association, telephone company or other provider of electronic
32 communication services subpoenaed pursuant to this chapter
33 refuses to produce any records required by subpoena, ~~the chief~~
34 ~~executive officer or command officer of the law enforcement~~
35 ~~agency~~ *Attorney General, district attorney, sheriff, police chief,*
36 *or their designee* may petition the superior court in the county in
37 which the matter is pending for an order compelling the entity to
38 comply with the subpoena.

39 (2) The petition shall set forth all of the following:

1 (A) That due notice of the time and place for the production of
2 the records or the giving of authentication was given.

3 (B) That the entity was subpoenaed in the manner prescribed
4 in this chapter.

5 (C) That the entity failed to produce the records required by
6 the subpoena or to authenticate records before the officer named
7 in the subpoena, or both.

8 (b) Upon the filing of the petition, the court shall enter an
9 order directing the public utility, bank, credit union, savings
10 association, telephone company or other provider of electronic
11 communication services to appear before the court at a specified
12 time and place and then and there show cause why the entity has
13 not produced or authenticated the records as required by the
14 subpoena. A copy of the order shall be served upon the entity. If
15 it appears to the court that the subpoena was properly issued by
16 ~~the chief executive officer or command officer of the law~~
17 ~~enforcement agency~~ *the Attorney General, district attorney,*
18 *sheriff, police chief, or their designee*, the court shall enter an
19 order that the public utility, bank, credit union, savings
20 association, telephone company or other provider of electronic
21 communication services appear before the officer named in the
22 subpoena at the time and place fixed in the order and produce,
23 authenticate, or produce and authenticate the required records.
24 Upon failure to obey the order, the public utility, bank, credit
25 union, savings association, telephone company or other provider
26 of electronic communication services shall be dealt with as for
27 contempt of court.

28 629.3. The public utility, bank, credit union, savings
29 association, telephone company or other provider of electronic
30 communication services may charge a reasonable fee for any
31 administrative expense related to the disclosure.

32 629.4. ~~A disclosure made in good faith pursuant to this~~
33 ~~chapter does not give rise to any criminal liability or any action~~
34 ~~for damages for the disclosure of the name and address of a~~
35 ~~customer by a public utility, bank, credit union, savings~~
36 ~~association, telephone company or other provider of electronic~~
37 ~~communication services. No cause of action shall be brought~~
38 ~~against any provider, its officers, employees, or agents for~~

- 1 *providing information, facilities, or assistance in good faith*
- 2 *compliance with a subpoena.*

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